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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/813,877 | 03/30/2004 | Teresa Mead | 017242-010500US | 5757 |
| 20350 | 7590 | 09/23/2005 | EXAMINER | |
| TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834 | | | EDELL, JOSEPH F | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3636 | |

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|-----------------------------|--|
| Office Action Summary | Application No. 10/813,877 | Applicant(s) MEAD ET AL. | |
| | Examiner Joseph F. Edell | Art Unit 3636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 1-19, 26, 27, 32-35, and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-25, 28-31 and 36-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>05/26/04</u> | 6) <input type="checkbox"/> Other: _____ |

A

DETAILED ACTION

Election/Restrictions

1. Claims 1-19, 32-35, and 41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 01 September 2005. Applicant's attempt to cancel the withdrawn claims 1-19, 32-35, and 41 does not comply with the requirements of 37 CFR 1.121(c). Consequently, claims 1-19, 32-35, and 41 are still pending and are currently withdrawn herein.

In an additional telephone conversation with D. Gibby on 15 September 2005 a provisional election was made without traverse to prosecute the invention of Specie II as forth in Office Action mailed 08 August 2005, claims 20-25, 28-31, and 36-40. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26 and 27 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 20-25, 31, 36, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,675,853 to Linge.

Linge discloses a baby holding device that includes all the limitations recited in claims 20-25, 31, 36, and 40. Linge shows a baby holding device having a pillow 10 (see Fig. 1) with a medial region 32 and two opposed arms extending from the medial region that define an inner well, a securing system 52 operably coupled to the pillow, a center holding strap 62 of the securing system, side straps 56,58 of the securing system extending from each arm, buckle connectors 60 (hook and loop fasteners that may be buckles, see column 6, line 43) on the side straps, a seat disposed across the well region and including a fabric coupled to the arms and the medial region wherein the center strap is coupled to the seat to permit the baby's feet to hang from the seat, and the pillow includes a fabric shell 38 encasing a filling material (see column 4, lines 59-61).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 28-30 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linge.

Linge discloses a baby holding device that is basically the same as that recited in claims 28-30 and 37-39 except that the ranges of the height and width of the medial region and arms are not specified, as recited in the claims. Although the height and width ranges are not specifically recited, modifying the height and width ranges would have been obvious at the time of Applicant's invention because the use of optimal or workable ranges discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the height and width of the medial region and arms since the Applicant has not disclosed that having the specific ranges solves any stated problem or is for any particular purpose and it appears that the medial region and arms would perform equally well with any well known height and/or width used in the art.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to baby holding devices:

U.S. Pat. No. 5,699,569 to Schwarz-Zöhrer U.S. Pat. No. 5,826,287 to Tandrup

U.S. Pat. No. 6,095,614 to Canna et al. U.S. Pat. No. 6,499,165 B1 to Morgillo

U.S. Pat. No. 6,553,590 B1 to Leach

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JE

September 19, 2005



Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600